



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:335. Financial audits.

6 RELATES TO: KRS 61.878(1)(c), 224.60-130(1)(d), (j), (k), 224.60-140(2)(a), (e)

7 STATUTORY AUTHORITY: KRS 224.60-130(1)(k)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(k) requires the
9 establishment of the policy, guidelines, and procedures to perform a financial audit of an owner
10 or operator receiving reimbursement for corrective action services from the Petroleum Storage
11 Tank Environmental Assurance Fund (PSTEAF)[ecabinet], or of an entity who contracts or
12 subcontracts for corrective action services at a facility whose owner or operator is eligible for
13 reimbursement from the PSTEAF. This administrative regulation establishes procedures for
14 audits and the penalties for noncompliance.

15 Section 1. Applicability. An entity shall be subject to financial audit if it is an entity
16 described in KRS 224.60-130(1)(k).

17 Section 2. Financial Audit Policy and Procedure. (1) The cabinet shall audit an entity if:

18 (a) A document it is required to submit to the cabinet appears to be fraudulent; or

19 (b) There is evidence or other reason to believe that the entity has violated a federal or
20 state law or regulation related to its actions.

1 (2) Upon written request by the cabinet, records, as described in KRS 224.60-130(1)(k),
2 shall be provided to the cabinet during a financial audit.~~[A record shall be subject to financial~~
3 ~~audit if it is described in KRS 224.60-130(1)(k).]~~

4 (3)(a) The cabinet shall notify the subject of the audit, in writing, of the date that the audit
5 is scheduled to begin. The notice shall be sent at least ten (10) working days before the scheduled
6 start of the audit.

7 (b) A decision to reschedule the audit shall rest solely with the cabinet, and it shall not be
8 rescheduled more than thirty (30) days after the date of the original audit.

9 (4)(a) If the owner or operator fails to maintain records as required by KRS 224.60-
10 130(1)(k), the cabinet shall recover money reimbursed to the owner or operator for the cost of
11 corrective action at the facility to which the missing documents relate.

12 (b) If an eligible contractor or subcontractor fails to maintain records as required by KRS
13 224.60-130(1)(k), the cabinet shall recover any monies paid to the entity pursuant to a contract or
14 agreement to perform a corrective action service at that facility.~~[If the entity is certified under~~
15 ~~401 KAR 42:316, that certification shall be revoked or suspended in accordance with 401 KAR~~
16 ~~42:316, Section 4.]~~

17 Section 3. Improper Use of Reimbursements. (1) If the audit by the cabinet finds an
18 improper, irregular, or illegal use of money received directly or indirectly from the cabinet, or
19 that the money was obtained by fraud or misrepresentation, the cabinet shall report the results of
20 the audit to the proper authorities for civil and criminal investigation.

21 ~~[(2) If the subject of the audit is certified pursuant to 401 KAR 42:314 or 401 KAR~~
22 ~~42:316, and the audit conducted by the cabinet finds improper, irregular, or illegal use of money~~
23 ~~received directly or indirectly from the cabinet, or that the money was obtained by fraud or~~

1 ~~misrepresentation, the cabinet shall immediately revoke the certification in accordance with 401~~
2 ~~KAR 42:314, Section 8, or 401 KAR 42:316, Section 4.]~~

3 (3)(a) Failure by an owner or operator to cooperate with~~[allow]~~ an audit shall render the
4 petroleum storage tank owner or operator ineligible for reimbursement. Reimbursements to the
5 owner or operator shall be subject to recovery by the cabinet.

6 (b) Failure by an entity, who contracts or subcontracts for corrective action services at a
7 facility, to cooperate with an audit shall result in the revocation of eligibility. Reimbursements
8 to that entity, pursuant to a contract for a corrective action service, shall be subject to recovery
9 by the cabinet.

10 Section 4. Extensions. (1) The owner or operator of a UST system may request an
11 extension to a deadline established by this administrative regulation or established by the cabinet
12 in writing pursuant to this administrative regulation.

13 (2) The extension request shall be submitted in writing and received by the Underground
14 Storage Tank Branch of the Division of Waste Management prior to the deadline.

15 (3) The cabinet may grant an extension, if the cabinet determines that an extension would
16 not have a detrimental impact on human health or the environment.~~[Failure by a person certified~~
17 ~~pursuant to 401 KAR 42:316, or a supplier, provider, contract employee, or subcontractor of that~~
18 ~~person, to allow an audit shall result in the revocation of that certification. Reimbursements to~~
19 ~~that person, pursuant to a contract for a corrective action service, shall be subject to recovery by~~
20 ~~the cabinet.]~~

401 KAR 42:335 approved for filing.

4/14/11
Date

L. K. Peters
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe
Division of Waste Management
200 Fair Oaks, Second Floor
Frankfort, KY 40601
Telephone: (502) 564-6716 Fax (502) 564-4049
Email: Cassandra.Jobes@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedures for financial audits and the penalties for noncompliance.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the procedures for financial audits and the penalties for noncompliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statute by establishing procedures for financial audits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statute by establishing procedures for financial audits.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment changes the existing administrative regulation by removing the language regarding certified contractors and certified companies and including language for extensions.

(b) The necessity of the amendment to this administrative regulation:

The amendment is necessary to be consistent with the changes to the certified contractor and the certified company regulations.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the content of the authorizing statutes by establishing procedures for financial audits.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the statute by establishing procedures for financial audits.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The entities that will be effected by this administrative regulation are those that are identified in KRS 224.60-130(1)(k). This includes petroleum storage tank owners and operators, contractors and subcontractors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

There are no additional requirements to comply with the amendment to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no additional cost to entities for complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

There is no additional benefit for complying with this amendment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to the agency to implement this amendment.

(b) On a continuing basis: There is no cost to the agency to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for this amendment is PSTEAF.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No additional fees will be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This amendment does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is not applied. The same procedures apply for all financial audits.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:335

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management will be impacted by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.60-130(1)(k)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This amendment will not generate revenue.

(c) How much will it cost to administer this program for the first year?

This amendment will not cost the program additional funds.

(d) How much will it cost to administer this program for subsequent years?

This amendment will not cost the program additional funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: